

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 11, 2015 appellant, then a 56-year-old transportation security officer, filed an occupational disease claim (Form CA-2) alleging that she sustained low back pain primarily on the left side due to factors of her federal employment. She advised that her pain began after working with oversize luggage for four hours.³ Appellant stopped work on June 8, 2015. She became aware of her condition on June 8, 2015 and attributed it to her employment on June 9, 2015.

Later, on June 23, 2015 appellant filed a traumatic injury claim (Form CA-1) alleging that on June 8, 2015 she experienced low back pain due to continually lifting heavy bags.

By letter dated June 29, 2015, OWCP requested additional factual and medical evidence regarding appellant's occupational disease claim, including a detailed report from her attending physician addressing the relationship between any diagnosed condition and the identified work factors.

Appellant provides a June 10, 2015 report from Dr. Robert Contreras, Board-certified in family medicine. Dr. Contreras had evaluated appellant for a "[s]elf-reported" low back injury, noting that she worked in transportation security at the employing establishment. Appellant obtained a history of back pain primarily on the left side after "lifting heavy suitcases and golf bags all day" on June 8, 2010. Dr. Contreras diagnosed lumbar sprain and pain, a lumbar paraspinal muscle spasm, and "[o]verexertion from lifting with repetitive movement."

Additional reports from Dr. Contreras, dated June 10 and 12, 2015, reported that the condition was caused or aggravated by employment. He listed the history of injury as lifting suitcases and golf bags. Dr. Contreras referenced that he was rechecking appellant for low back strain and noted that she had intended to speak with her supervisor but had not yet filed an injury claim. He diagnosed lumbar pain, lumbar sprain, lumbar paraspinal muscle spasm, and overexertion from repetitive motion. Dr. Contreras found that she could perform limited-duty employment lifting up to 10 pounds. He noted that appellant "admits to keeping her back aligned with a chiropractor that she has been using for over 30 years." Dr. Contreras referred appellant for physical therapy. In the form report of June 10, 2015, he checked a box marked "yes" that the condition was caused or aggravated by employment.

In a June 10, 2015 statement of workplace injury form, appellant related that she was working in the oversize area lifting gun cases and full golf bags. She reported that on June 8, 2015 at around 10:00 a.m. her back began hurting but she thought it would go away when she stopped lifting. Appellant related that she reported the injury when the pain worsened.

Cornelious Roddy, appellant's supervisor, acknowledged that on June 10, 2015 appellant advised him that her back hurt but that she had told him that she did not believe that it was work related. After he advised her to see her personal physician, she told him that the back pain was due to her employment.

³ Appellant related that she became aware of her condition on June 9, 2015 after working in the oversize area; however, the claim form indicated that she stopped work on June 8, 2015.

An employing establishment workers' compensation official, Edward Schauer, related that on June 11, 2015 appellant provided him with a medical report claiming that she had been injured working oversized baggage. Appellant maintained that the injury occurred on June 8, 2015 but that she had not informed her supervisor on that date. Mr. Schauer advised that the traumatic injury claim form was being developed as an occupational disease claim as the date of injury was not known.

Dr. Contreras, in additional reports dated June 19 and July 7, 2015, diagnosed lumbar pain, lumbar sprain, lumbar paraspinal muscle spasm, and overexertion due to lifting repetitively. He found that appellant could perform modified employment lifting and pushing up to 30 pounds, but on July 7, 2015 he found that she could perform her usual employment and released her from treatment.

On June 26, 2015 Dr. Richard Virgilio, an osteopath, diagnosed lumbar sprain that had improved after a back injury and found that appellant could try her usual work duties and on July 1, 2015 he noted that her back injury was improving and that she could try performing her usual work duties.

The employing establishment controverted appellant's claims and summarized the statements made by appellant, Mr. Roddy, and Mr. Schauer.

The employing establishment again controverted appellant's claim, by e-mail dated July 23, 2015, as her allegations were not clear and as she initially told Mr. Roddy that her condition was not work related. It further denied her assertion that she performed continuous lifting, as the position provided for rotations every 30 minutes.

By decision dated August 6, 2015, OWCP denied appellant's occupational disease claim. It found that she had established that the work event occurred as alleged but that the medical evidence failed to contain a diagnosis causally related to the claimed event. OWCP noted that Dr. Virgilio diagnosed back pain on June 26, 2015 but found that pain was not a diagnosis under FECA.

On appeal appellant argues that her physicians diagnosed lumbar sprain and spasms in addition to pain. Her physicians also prescribed medication and placed her on modified duty.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the

⁴ 5 U.S.C. § 8101 *et seq.*

employment injury.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁶

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether “fact of injury” is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence.⁷ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁸ An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.⁹

ANALYSIS

Appellant filed an occupational disease claim alleging that she sustained low back pain due to lifting heavy bags for four hours. She also filed a traumatic injury claim contending that she experienced pain in her lower back after lifting heavy bags on June 8, 2015. OWCP adjudicated appellant’s claim as an occupational disease; however, it appears from appellant’s June 10, 2015 statement that she attributed her condition to working in the oversize area on June 8, 2015 lifting heavy luggage. As appellant alleged an injury due to events occurring over the course of a single workday, her claim is properly characterized as a claim for a traumatic injury.¹⁰

OWCP accepted the occurrence of the identified work factor of appellant lifting oversize luggage for four hours. The issue, consequently, is whether the medical evidence establishes that she sustained an injury as a result of lifting heavy luggage on June 8, 2015.

The Board finds that the medical evidence is insufficient to establish that appellant sustained a low back condition as a result of the June 8, 2015 employment incident. In his June 10, 2015 report, Dr. Contreras evaluated her for a back injury that he indicated was self-reported. He noted that on June 8, 2010 appellant felt pain mostly in the left side of her back after she lifted suitcases and golf bags. Dr. Contreras diagnosed a lumbar paraspinal muscle spasm, lumbar sprain, lumbar pain, and overexertion from repetitive lifting. While he obtained a

⁵ *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

⁶ *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁷ *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

⁸ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁹ *Id.*

¹⁰ A traumatic injury is defined as a “condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift.” 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift.” 20 C.F.R. § 10.5(q).

history of the June 8, 2015 work incident, he did not directly attribute the diagnosed conditions to that incident. Consequently, Dr. Contreras' report is of diminished probative value on the issue of causal relationship.¹¹

In the form report that same date, Dr. Contreras diagnosed lumbar strain and checked "yes" that the condition was caused or aggravated by employment. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.¹²

On June 12, 2015 Dr. Contreras evaluated appellant for low back strain and indicated that she had not filed an injury claim but intended to speak with her supervisor. He diagnosed lumbar pain, lumbar sprain, lumbar paraspinal muscle spasm, and overexertion from repetitive lifting. Dr. Contreras listed work restrictions and noted that appellant had used a chiropractor for 30 years. He did not, however, specifically address the cause of the diagnosed conditions or relate the conditions to her lifting on June 8, 2015.¹³ A report from a physician addressing causation and well supported by medical rationale is particularly necessary given appellant's long history of chiropractic treatment for her back.¹⁴

In his June 19, 2015 report, Dr. Contreras again diagnosed lumbar pain, lumbar sprain, lumbar paraspinal muscle spasm, and overexertion from repetitive lifting. He found that appellant could perform modified employment lifting and pushing up to 30 pounds. In reports dated June 26 and July 1, 2015, Dr. Virgilio diagnosed lumbar sprain that had improved after a back injury and found that she could try her usual work duties. Again, however, the physicians do not address causation. As discussed, medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁵

On appeal appellant maintains that her physicians diagnosed lumbar sprain and spasms in addition to pain, and thus provided a diagnosed condition. She also notes that her physicians placed her on limited duty and prescribed medication. OWCP found that appellant's physician diagnosed pain rather than a specific medical condition. Appellant has not met her burden to submit a well-reasoned medical report explaining how the work incident caused a diagnosed medical condition.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

¹¹ See *J.B.*, Docket No. 15-0201 (issued October 6, 2015); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹² *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹³ See *supra* note 11.

¹⁴ See *H.J.*, Docket No. 15-0705 (issued November 2, 2015).

¹⁵ See *M.B.*, Docket No. 14-635 (issued June 12, 2014); *Michael E. Smith*, 50 ECAB 313 (1999).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an injury to her lower back causally related to a June 8, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 6, 2015 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: March 9, 2016
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board